

Remarks

Claim 9 is amended. Claims 1-43 are pending.

In response to the Restriction Requirement, Applicant provisionally elects, with traverse, the invention of claims 1, 8-9, 15-19, 23, and 25-26 (Group I), directed to a method to detect *vanA* in a sample, in which a sample suspected of having amplified *vanA* nucleic acid is contacted with at least one *vanA*-specific oligonucleotide probe under high stringency hybridization conditions effective to form a hybrid, and hybrid formation is detected or determined. Note that claims 8-9 and 13-14 were not assigned to any group in the Restriction Requirement, however, as claim 8 depends on claim 1 and claim 9 depends on claim 8, and claim 13 depends on claim 2 and claim 14 depends on claim 13, it is Applicant's position claims 8-9 are in Group I and claims 13-14 are in Group II. Reconsideration and withdrawal of the Restriction Requirement, in view of the remarks below, is respectfully requested.

The Restriction Requirement is traversed on the basis that the inventions are closely related. That is, claims directed to a method to detect *vanA* in a sample, in which a sample suspected of having amplified *vanA* nucleic acid is contacted with at least one *vanA*-specific oligonucleotide probe under high stringency hybridization conditions effective to form a hybrid, and hybrid formation is detected or determined (claims 1, 8-9, 15-19, 23, and 25-26; Group I), are clearly related to claims directed to a method to detect *vanA* in a sample, in which a biological sample is contacted with at least one *vanA*-specific oligonucleotide primer under conditions effective to amplify *vanA* nucleic acid, and the presence or amount of amplified nucleic acid is detected or determined (claims 3, 5-7, 15-19, 23, and 25-26; Group III), claims directed to a method to detect *vanA* nucleic acid and *vanB* nucleic acid in a sample, in which a sample suspected of having amplified *vanA* nucleic acid or amplified *vanB* nucleic acid is contacted with at least one *vanA*-specific oligonucleotide probe and with at least one *vanB*-specific oligonucleotide probe under high stringency hybridization conditions effective to form a hybrid between the *vanA*-specific oligonucleotide probe and amplified *vanA* nucleic acid and between the *vanB*-specific oligonucleotide probe and amplified *vanB* nucleic acid, and hybrid formation is detected or determined (claims 28 and 31; Group V), and claims directed to a method to detect *vanA* nucleic acid and *vanB* nucleic acid in a sample, in which a biological

sample suspected of having *vanA* or *vanB* nucleic acid is contacted with at least one *vanA*-specific oligonucleotide primer under conditions effective to amplify *vanA* nucleic acid and with at least one *vanB*-specific oligonucleotide primer under conditions effective to amplify *vanB* nucleic acid, and amplified nucleic acid is detected or determined (claims 29-31; Group VI). Moreover, the *vanA*-specific oligonucleotide probe or primer recited in the methods of Groups I, III, V and VI include sequences substantially corresponding to nucleotides 870 to 896 of the *vanA* gene, the complement thereof, or a portion thereof, sequences substantially corresponding to nucleotides 851 to 868 of the *vanA* gene, the complement thereof, or a portion thereof, or sequences substantially corresponding to nucleotides 898 to 917 of the *vanA* gene, the complement thereof, or a portion thereof. Therefore, the claims in at least Groups I, III, IV and VI are clearly related.

The Restriction Requirement is also traversed on the basis that Restriction Requirements are optional in all cases. M.P.E.P. § 803. If the search and examination of at least a portion of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it may arguably include claims to distinct or independent inventions. M.P.E.P. § 803. Moreover, it is submitted that Applicant should not be required to incur the additional costs associated with the filing of multiple divisional applications in order to obtain protection for the claimed subject matter. Due to the relatedness of at least the claims in Groups I, III, V and VI, as discussed above, those Groups can be efficiently and effectively searched in a single search with no additional burden placed on the Examiner. In particular, due to the relatedness of at least the claims in Groups I and V, as evidenced by the claims in those two groups being in the same class (class 435) for search purposes, the claims in those Groups can be efficiently and effectively searched in a single search with no additional burden placed on the Examiner.

Thus, the Restriction Requirement is properly traversed. Accordingly, reconsideration and withdrawal of the Restriction Requirement is respectfully requested.

CONCLUSION

The Examiner is invited to telephone Applicant's attorney at (612) 373-6959 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

KIRSTY JANE DODGSON,

By her Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 373-6959

Date September 12, 2005 By Janet E. Embretson
Reg. No. 39,665

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 12 day of September, 2005. (mm 24)

CANDIS BUENDING

Name

Signature